IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

CRML LEAVE TO APPEAL No. 185 of 2006

STATE
V/S
MOOL CHAND @ MOOL SINGH

Mr. HR SONI, PP, for the appellant / petitioner

Date of Order : 31.8.2006

HON'BLE SHRI N P GUPTA,J.

ORDER

Heard learned Public Prosecutor, and perused the record.

The prosecution has come with a positive case, about the accused persons having come to the house of Khem Singh (on his flour mill), which was being operated by him, duly armed with a naked sword, the wife of Khem Singh and his son Fefa Kanwar and Rajendra Singh respectively were there, and while hurling abuses he entered the house, and wielded the blow on the neck of the informant's wife, and caused injury on the left side of the neck. In the process of Rajendra Singh intervening, he also sustained injury.

Having perused the record, apart from anything-else this much, at least, is clear, that the prosecution has clearly come with a case of the occurrence having occurred at the house of the informant, and in the manner

alleged; as against which, a look at the evidence of Khem Singh P.W.1 does show, that he has deposed that the incident occurred in the room adjoining the room in which the flour mill is installed. Then, he has deposed, that it occurred in the room, next after leaving one more room from flour mill, and that room has been shown to be by mark-X in Site Plan Ex.P-3, and that the blood had fallen on the ground in that room. Then, he has admitted, that the photographs Ex. D-2 to D-6 show the house of the accused. In this background, it is significant to note, that he was categorically suggested, that it was the informant, who along with his wife and son had gone to the house of the accused with intention to give beating, duly armed with naked sword, and that the informant along family members gave beating to the accused, at the accused's house. He was also suggested that accused snatched the sword from informant's son, and in that process injuries were sustained. Then, he has also admitted, that he sells liquor at his house, though he has no liquor contract. Then, he was also suggested, that he does the liquor vending, in view of his being Up Sarpanch, and having good relations with Thanedar. In this sequence, the victim Fefa Kanwar P.W.2, in cross-examination, has pleaded ignorance to the suggestion about Khem Singh having been arrested on the information of the accused, and had to suffer imprisonment. She has also denied suggestion about the prosecution party having gone to the house of the accused to give beating, duly armed with naked sword. In this sequence a look at the

statement of I.O., P.W.12 shows, that he has categorically deposed, that he got done photography of the place of incident, and those photographs were proved to be Ex.D-2 to D-6.

In my view apart from anything else, this sequence of events is a million dollar circumstance to establish, that the incident did not take place at the house of the informant, as alleged, rather it took place at the house of the accused, as is evident from the blood stains, visible in the photographs Ex.D-2 to D-6. Admittedly no blood has been recovered from the place, at which the incident is said to have taken place in the site plan.

In my view, when admittedly there is bad blood between the parties, inasmuch as, the informant is Up Sarpanch and does vend liquor without having any liquor contract, and the accused has lodged various complaints against the informant. Thus, in my view, the version of the defence is clearly probablised, rather is substantially substantiated.

Thus, I do not find any error in the finding of the learned trial court, acquitting the respondent. The petition for leave to appeal, thus has no force, and is therefore dismissed.

(N P GUPTA),J.

/Sushil/